IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 7946 of 2004

Date of Decision: 30.11.2006

Rani Sharma .....Petitioner

Versus

Union of India and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Sudeep Mahajan, Advocate
for the petitioner.

Mr.MS Guglani, Advocate for respondent No.1.

Mr.Ashok Aggarwal, Additional AG Punjab for respondents No.2 to 5.

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S. D. ANAND, J.

1. By this judgment, we shall dispose of two Writ Petitions (No.7946 of 2004 and 7947 of 2004) which are based upon identical facts and question of law.

2. The following facts, culled out from the pleadings of the parties are, even otherwise, presently beyond the pale of controversy. These facts, though taken from Civil Writ Petition No.7946 of 2004, bear absolute similarity to the facts averred in Civil Writ Petition No.7947 of 2004.

3. In response to an advertisement, the petitioner applied for and

was appointed to the post of Instructor, on contractual basis, on a fixed salary of Rs.2,000/- per month. Though the place of functioning of the petitioner was Government Community Polytechnic Institute, Lehragaga (District Sangrur), the appointment was in the context of a Scheme of Community Polytechnics under the Ministry of Human Resource Development, Government of India. The contract was renewed from time to time during the period 1994 to 2004. The initial contractual period was from 18.10.2001 to 17.4.2002 (Annexure P5). The agreement was subsequently extended from time to time, each extension being for a period of six months. The last extension was from 20.10.2003 to 19.4.2004 (Annexure P7). However, prior to the expiry of that period, the petitioner filed Civil Writ Petition (No.2354 of 2004). Apart from claiming entitlement to the pay scale admissible to an Instructor in the employment of Government of Punjab, the petitioner had also asked for a direction to the respondents to regularise her services from the date of her initial appointment, along with all the consequential benefits. That Writ Petition was disposed of by a Division Bench of this Court vide order dated 12.2.2004. This Court upheld the entitlement of the petitioner to emoluments in terms of the orders granted by this Court in Civil Writ Petition No.11275 of 1998, decided on 16.3.2001 (Anu Lumba and others Versus Union of India & others). At the same time, this Court noticed that in a petition for Special Leave to Appeal (Civil) No.11597 of 2001, preferred by the official respondents against the orders passed by this Court in Civil Writ Petition No.11275 of 1998, the Hon'ble Apex Court had ordered the issuance of notice confined to the question whether this Court could have directed regularisation of service of the employee or not. In the

light thereof, it was ordered that though the official respondents would calculate the payments due to the petitioner (in Civil Writ Petition No.2354 of 2004) within three months from the date of order and release the same to her within a further period of one month, the issue of regularisation would be subject to the final outcome of the petition for Special Leave to Appeal (Civil) No.11597 of 2001. It was further directed that the respondents would consider the claim of the petitioner for regularisation in service consequent upon the decision of the issue aforesaid by the Hon'ble Apex Court.

4. In the present writ petition, the petitioner impugns the validity of the non-renewal of the contract beyond 19.4.2004. The averment, in the context, is that the non-renewal is malafide as it had been actuated by the filing of Civil Writ Petition No.2354 of 2004 by her. The further averment was that the non-renewal of the service agreement is aimed at pre-empting this Court from passing further orders similar to those already passed in Civil Writ Petition No.11275 of 1998. The petitioner applied for the grant of a writ in the nature of mandamus directing the respondents to renew the service agreement with immediate effect, along with all consequential benefits i.e. seniority and continuity of service etc. Also applied for is a direction to the respondents to pay to the petitioner arrears of salary with effect from October, 2004 onwards.

5. The plea raised on behalf of the respondents is as under:

6. For want of financial capacity (i.e. non-receipt of adequate grant etc.), the respondents are not in a position to enter into the impugned contractual obligation on the higher emoluments which would be payable to the petitioner in compliance with the orders dated 12.2.2004 of this Court in

Civil Writ Petition No.2354 of 2004.

7. In short, the plea raised on behalf of the respondents is that the non-renewal is on account of inability on their part to pay the enhanced amount to which the petitioner would be entitled per month in compliance with the orders passed in Civil Writ Petition No.2354 of 2004.

8. We have heard Mr.Sudeep Mahajan, learned counsel for the petitioner, Mr.MS Guglani, Advocate for Union of India, respondent No.1 and Mr.Ashok Aggarwal, Additional AG Punjab for respondents No.2 to 5.

9. It is common ground that the appointment of the petitioner, as an Instructor, was on contractual basis and an honorarium @ Rs.2,000/- per month was payable to her. The appointment of the petitioner was under a temporary scheme of Community Polytechnic of Ministry of Human Resource Development, Government of India and it was liable to termination at any time. The following terms and conditions of the impugned agreement (Annexure P7) are re-produced hereunder for facility of reference:

> "1) The Ist party has appointed the 2nd party Mrs.Rani Sharma from 20.10.2003 to 19.4.2004 for the post of Instructor Screen Printing. All the terms and conditions of this agreement have been told to the 2nd Party orally on dated 20.10.2003.
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> 2) For the above work Mrs.Rani Sharma will be paid honorarium Rs.2000/- per month.
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> 3) That this appointment is under the temporary scheme of Community Polytechnic of Ministry of H.R.D. of Govt. of India and it can be terminated at any time or grant be stopped. Under such circumstances this contract will be considered invalid and

Punjab Government will not be responsible for this.

4) In the event of termination of the course/scheme for which the 2nd party has been appointed for the post of Instructor Screen Printing, the contract will automatically be considered invalid.

5) That the duration of training per day will be from 9 AM to 5 PM at main centre/extension centre. Under special circumstances the information concerning the change in time table will be got from the Project Officer of Community Polytechnic Wing.

6) The appointment made on contract basis will be completely temporary according to the terms & conditions of the agreement. And the 2nd party will not claim confirmation for any reason from Punjab Government/Govt. of India under Govt. Job from any Court or Tribunal.

7) That the services of Mrs.Rani Sharma, appointed on contract basis can be terminated without any prior notice in case his work and conduct are not found satisfactory by Principal/Project Officer.

8) That Mrs.Rani Sharma will get complete information about the functioning of rural programme from the Project Officer.

9) That Mrs.Rani Sharma will have to work on vocational training transfer of technology, technical services and dissemination of information under the supervision of Principal/Project Officer at Main Centre/Extension Centre.

10) The 2nd party will not be given any T.A. for coming to and going back from the Main Centre/Extension Centre.

11) The 2nd party will get casual leaves during the agreement period as per rules and he will not be entitled to any other type of leave.

12) That Mrs.Rani Sharma will be responsible for the maintenance of accounts, preservation and safety of the equipments given to him at the main centre/extension centre of community wing. The 2nd party will be accountable for any delibrate loss.

13) After the expiry of the contract or not complying with the above section 7, the Ist party will be free to appoint any other person in place of 2nd party Mrs.Rani Sharma.

14) That if any party wants to elapse the contract, it will have to inform the other one month in advance."

(underlining of the relevant clause is for emphasis)

10. Faced with the predicament of having to wriggle out of the implication of the impugned agreement (Annexure P7) and in view of the averred position of the respondents with regard to their financial inability to pay a higher amount per month for want of funds/grant, learned counsel for the petitioner argued that the petitioner is, in any case, entitled to the emoluments in terms of the order dated 12.2.2004 of this Court for the duration similarly circumstanced employees have been allowed to function in actuality.

11. Though the learned counsel for the respondents was not in a position to deny the correctness of the above claim to the extent the relief

was granted by this court in Civil Writ Petition No.2354 of 2004, he argued that the petitioner can not claim entitlement to any part of the emoluments beyond 19.4.2004 because the impugned agreement was not renewed beyond that date.

12. The statement that the petitioner would be entitled to higher emoluments in terms of order dated 12.2.2004 of this Court (in Civil Writ Petition No.2354 of 2004) is to aver the obvious. However, the emoluments payable to her in those terms would extend only upto the period the impugned agreement was in currency i.e. 19.4.2004. In view of the conceded position that the impugned agreement did not come to be renewed thereafter i.e. beyond 19.4.2004, there is no right whatsoever vested in the petitioner to claim any part of the emoluments (or higher emoluments, for that matter) beyond that period. Even at the cost of repetition, it may be indicated that the impugned agreement was on six monthly basis and contractual. The impugned agreement was not renewed, for one reason or the other, beyond the indicated date. The petitioner, thus, had no occasion to function on the post aforementioned. Obviously, it does not lie in her mouth to claim emoluments for a period she did not function in actuality and during which there was no contractual agreement between her and her employer.

13. In the light thereof, it is directed that the respondents shall pay emoluments to the petitioner in terms of the orders passed by this Court in Civil Writ Petition No.2354 of 2004. The period for which her emoluments would be payable would be the same to which Civil Writ Petition No.2354 was relatable. However, the relief of re-instatement into service shall stand declined in view of the fact that the impugned appointment has been proved

to have been contractual and for a specified period of time and the agreement was not renewed after a particular date. The petitioner cannot, thus, validly lay a claim to the service benefits like continuity in service and seniority etc. The grant of such benefits would be completely foreign to the aspect of legal adjudication.

14. This Petition shall be disposed of in the terms afore-mentioned.

(S. D. ANAND)
JUDGE

(J. S. KHEHAR)
JUDGE

November 30, 2006
SRM